IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9732 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

==========

STATE OF GUJARAT

Versus

BHIMJIBHAI RAMJIBHAI PATEL

Appearance:

MR LR POOJARI, AGP, for Petitioner

MS KUSUM M SHAH for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 01/05/2001

ORAL JUDGEMENT

1. Rule. Learned advocate Ms. Kusum M. Shah waives service of notice of Rule for the respondent.

2. The State is aggrieved by an order passed by the Deputy Secretary (Appeals), Revenue Department, on the 12th March, 1999, in Revision Application No.6 of 1998, arising out of an order passed by the Collector, Banaskantha, at Palanpur. The facts leading to the filing of this petition can be narrated thus:

2.1 An entry No.527 came to be made in 1982 in respect of land admeasuring 16 acres forming part of survey No.191 of village Chitrasani, on the ground that the said land is under occupation of the respondent herein since 1968 for working a mining lease. The said occupation was on basis of a lease deed for a period of 51 years. After the said entry was made, the Collector, Banaskantha took that entry into revision and passed an

order on the 30th March, 1998, cancelling the entry on the ground that the land in question has been notified as a reserved forest land. Aggrieved by the said order, the present respondent approached the Government with revision and the impugned order came to be passed, setting aside the order of the Collector and restoring entry No.527 on the ground that no record to indicate that the land is now part of the reserved forest was produced before the Collector. The learned Deputy Secretary also observed that, if the land is acquired under any other law, separate proceedings can be initiated.

3. Aggrieved by the said order, the present revision is preferred. Mr. Poojari has emphasized the fact that the Forest Department was not heard and was not made party to the proceedings either before the Collector or before the Deputy Secretary. In fact, this land is part of the reserved forest area a no non-forest activity can be permitted to be continued without permission of the Central Government. The entry sought to be restored would lead to further litigation/complication and, therefore, restoration of the entry may not be permitted.

4. Ms. Shah, on the other hand, has agitated the question. She submitted that the respondent has been in possession by virtue of a registered lease deed since 1954. The entry was made in 1982, which is sought to be cancelled by the Collector in 1998. The action is delayed and removal of entry will not decide the issues raised by the petitioner herein. Such points were not raised before the authorities below and, hence, the petition may not be entertained.

5. Having considered rival side contentions, it is amply clear that there are various aspects to the case which need to be considered in larger public interest. The respondent claims to lease holder by virtue of a registered lease deed executed in 1954. However, on basis of this very document, entry has been made in 1982 only. The land appears to have been included in the reserved forest in 1975 when the entry was not existent. The effect of inclusion of this land in reserved forest area also requires to be considered. The relevant papers were not placed before the Collector by both the sides as this point was not in issue and as the Forest Department was not a party to the proceedings. Since this fact has come on record of this Court, it is deemed fit and proper that the point-in-issue may be considered by the appropriate authority in light of all these relevant papers which may be produced either by the petitioner or

the respondent. It would also be appropriate that the authority below grants audience to the Forest Department which is directly connected or affected by the entry in question. The petition, therefore, can be disposed of by remanding the matter to the Collector, Banaskantha, at Palanpur with a direction that he will hear the respondent as well as the Forest Department and decide the question in respect of entry No.527 after considering the relevant provisions of law and the documents that may be produced before him afresh. The Collector shall decide the issue as early as possible, preferably, within two months from receipt of writ of this Court. The respondent and the Forest Department of the petitioner will co-operate with the Collector in disposing of the matter expeditiously.

6. In the result, the impugned order is quashed and set aside. Rule is made absolute accordingly with no orders as to costs.

7. Direct service is permitted.

[A.L. DAVE, J.]

gt